

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200926027**

Release Date: 6/26/2009

POSTN-105157-09

Third Party Communication: None

Date of Communication: Not Applicable

UILC: 382.00-00

date: March 09, 2009

to:

Supervisory Internal Revenue Agent

from:

Maria C. Milnes-Vasquez
Senior Technician Reviewer, Branch 4
Associate Chief Counsel (Corporate)

subject:

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 2 =

Year 3 =

Pursuant to § 7.07(2)(a) of Rev. Proc. 2009-01 I.R.B. 28 this letter is provided to advise you that the subject taxpayer stated that it will carry back to tax year ending Date 1, certain built-in losses recognized in Year 3 that are in excess of its § 382 limitation. Taxpayer was advised that the Service is adverse to its position and that its position is contrary to § 382(h)(4), which requires that such losses shall be carried forward and not carried back. Taxpayer is currently under audit for calendar years Year 1, Year 2, and Year 3. Taxpayer has not submitted a written statement indicating that its carry back claim has been, or is being, abandoned.

On Date 4, taxpayer submitted its request for a private letter ruling seeking three rulings equating to a request that it be allowed to carry back to taxable years ending on or before Date 2, built-in-losses recognized in Year 3 that were in excess of its § 382 limitation. In the letter ruling taxpayer stated that it intended to file a claim to carry back the entire Year 3 consolidated net operating loss, including losses in excess of its § 382 limit, to offset consolidated taxable income generated by taxpayer in tax year ending Date 1. Taxpayer represented that as of Date 3, taxpayer had a net unrealized built in loss and that an ownership change under § 382 occurred on that date. The letter ruling request was supplemented by additional correspondence.

Section 382(h)(4) and its legislative history provide that any portion of a recognized built-in loss that is disallowed must be carried forward and not carried backward. Accordingly, taxpayer's recognized built-in loss in excess of its § 382 limit must be carried forward under § 382(h)(4).

In a telephone conference on Date 5, taxpayer was advised that the Service remained adverse. On Date 6, taxpayer withdrew its letter ruling request. We provide this information to assist the field in making the appropriate adjustments on audit.

Attachments